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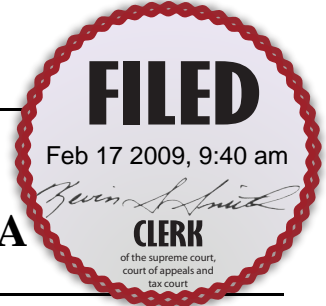
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**IN THE  
COURT OF APPEALS OF INDIANA**



IN THE MATTER OF: A.P., J.P., M.M.,  
CHILDREN IN NEED OF SERVICES

J.M.,

Appellant-Respondent,

vs.

MARION COUNTY DEPARTMENT OF  
CHILD SERVICES,

Appellee-Petitioner,

and

CHILD ADVOCATES, INC.,

Co-Appellee-Guardian Ad Litem.

No. 49A05-0808-JV-452

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APPEAL FROM THE MARION SUPERIOR COURT  
JUVENILE DIVISION

The Honorable Scott B. Stowers, Magistrate

The Honorable Marilyn A. Moores, Judge

Cause Nos. 49D09-0711-JC-48475, 49D09-0711-JC-48476 and 49D09-0711-JC-48477

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**February 17, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**RILEY, Judge**

## STATEMENT OF THE CASE

Appellant-Respondent, J.M. (Mother), appeals the trial court's determination that her minor children, A.P., J.P., and M.M., are Children in Need of Services (CHINS).

We affirm.

## ISSUE

Mother raises one issue on appeal, which we restate as: Whether a CHINS adjudication is proper when the coercive intervention of the trial court is not needed to protect Mother's minor children because Mother no longer maintains a romantic relationship with the boyfriend who imposed the unreasonable punishment<sup>1</sup> on A.P.

## FACTS AND PROCEEDURAL HISTORY

Mother is the mother of three minor children: A.P., born August 8, 2000, J.P., born September 12, 2001, and M.M., born January 28, 2004. They all resided in the home of Mother's boyfriend, M.H. On November 5, 2007, A.P. had gotten into trouble at school and his Mother was notified of his misbehavior. That evening, Mother allowed M.H. to discipline A.P. M.H. took A.P. into the garage where they stayed for approximately one to two hours. During that time, Mother never checked on A.P. When A.P. and M.H. returned from the garage, Mother noticed red marks on A.P.'s legs but did not inquire as to what had happened.

The next day, November 6, 2007, A.P. again got into trouble in school and was sent to the principal's office, who contacted Mother. That evening, M.H. once again disciplined

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<sup>1</sup> Mother concedes that the punishment imposed by her boyfriend was excessive and unreasonable.

A.P. in the garage. This time, they were in the garage for approximately ten minutes. When A.P. returned to the house, Mother observed red marks on A.P.'s face and chest. She did not question him as to what had happened or if any medical treatment was needed. The following day, November 7, 2007, Mother kept A.P. home from school because she did not want to embarrass A.P. by sending him to school with bruises on his face. Instead, A.P. stayed home with M.H. while Mother went to work.

That same day, November 7, 2007, Marion County Department of Children's Services (DCS) received a complaint of physical abuse and Nakia Martin (Martin), a case worker with the DCS, visited the residence. Martin noticed "severe bruising on both sides of [A.P.'s] face[,] ... bruising on the inside and behind his ear as well as scratch[es] on his nose." (Transcript p. 40). In addition, A.P. showed Martin circular marks on his chest and his left leg. A.P. told Martin that M.H. had inflicted the injuries. Prior to A.P.'s interview with the police, Mother allowed M.H. to speak personally with A.P. about what had happened. All three children were subsequently removed from Mother's care and placed with a relative. Mother was arrested on charges of child neglect and M.H. was arrested for battery.

On November 13, 2007, the DCS filed a CHINS petition with respect to the three children alleging that Mother had failed to protect A.P. from abusive discipline by her boyfriend. Following the removal of her children, Mother continued to reside with M.H. until late January-early February. After Mother moved out of his residence, she continued to maintain contact with M.H. Ever since his removal, A.P.'s behavior at school has improved considerably. He and his brother, J.P., are now enrolled in counseling.

The trial court conducted fact finding hearings over a course of five days: February 19, 2008, March 7, 2008, March 25, 2008, May 13, 2008, and June 4, 2008. At the conclusion of the evidence, the trial court issued a detailed order, consisting of 51 findings of fact and 10 conclusions of law and determined the children to be CHINS with respect to Mother. A dispositional hearing was held on July 15, 2008 holding the children to be CHINS.

Mother now appeals. Additional facts will be provided as necessary.

### DISCUSSION AND DECISION

Mother now contends that the State presented insufficient evidence to establish that her minor children were in need of services, pursuant to Ind. Code § 31-34-1-1. Specifically, she asserts that the trial court's intervention to protect her children was not necessary as she was no longer romantically involved with M.H., A.P.'s disciplinarian.

Indiana Code section 31-34-1-1 provides that

A child is child in need of services if before the child becomes eighteen (18) years of age:

(1) the child's physical or mental condition is seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of the child's parent, guardian, or custodian to supply the child with necessary food, clothing, shelter, medical care, education, or supervision; and

(2) the child needs care, treatment, or rehabilitation that:

(A) the child is not receiving; and

(B) is unlikely to be provided or accepted without the coercive intervention of the court

The State has the burden at trial of proving by a preponderance of the evidence that pursuant to I.C. § 31-34-1-1, the children were in need of services. *See Matter of E.M.*, 581 N.E.2d 948, 952 (Ind. Ct. App. 1991), *trans. denied*.

In her brief, Mother concedes that the State carried its burden in establishing that the children were less than 18 years of age and that the children's physical or mental condition was seriously impaired or endangered as a result of Mother's neglect. In this light, she also admits that M.H.'s discipline of A.P. was excessive and unreasonable. Mother's sole contention focuses on the requirement that her children are in need of the court's intervention as they are not receiving the necessary care. She argues that she has "taken concrete, definitive steps to free herself and her children from their connections with M.H." (Appellant's Br. p. 9). She elaborates that she now has her own apartment and deems her children more important than anything.

We are not persuaded. The record is clear that Mother not only failed to protect A.P. from excessive discipline, she also failed to provide him with the necessary care. After M.H. imposed his punishment on November 5, 2007 during an hour to two-hour long session, Mother failed to inquire whether A.P. was in pain or needed medical attention despite the visible red marks on her son's legs. The next day, Mother again allowed M.H. to discipline A.P. even though she had noticed the marks on her son from the previous night. This time, A.P.'s injuries increased, resulting in bruising on A.P.'s face and ear. Nevertheless, Mother again failed to stop or even intervene in the punishment and once more she did not offer medical attention. Despite these injuries, Mother left for work the following morning,

leaving A.P. in her boyfriend's care. At the fact finding hearing, Mother testified that she was unconcerned about A.P.'s bruising: "Nothing, nothing that I felt was critical or he wasn't complaining of any injuries. He seemed perfectly normal." (Tr. p. 104). On the other hand, Martin testified that "[t]he fact that the child had bruises taken to his ear was a sign that there could have been further damages," and that a medical examination would have been prudent. (Tr. p. 66). Furthermore, Mother allowed M.H. to be alone with A.P. on the morning of his police interview to discuss what A.P. should tell the police.

Even after the removal of her children, Mother resided with M.H. until late January-early February. Although, she now has her own apartment and claims to have ended her romantic involvement with M.H., Mother maintains contact with M.H. by having dinner with him and even accepting a birthday gift from him at her apartment in March 2008. Moreover, during the last hearing, the Guardian Ad Litem advised the trial court that at a recent supervised visit with her children, Mother was communicating with M.H. by phone.

Although Mother has made an effort to improve her situation by moving out of M.H.'s residence and enrolling in parenting classes, the record nevertheless reflects that she refused to take a class on domestic violence, as recommended by the DCS, because she "did not understand why she would need to complete the service." (Tr. p. 220). To this day, she has refused to acknowledge that the physical abuse A.P. suffered at the hands of her boyfriend could be characterized as domestic violence.

It is clear that the court's intervention was necessary to provide A.P. with the medical and mental care he was not receiving from his Mother. Not only did she fail to protect him

from M.H.'s unreasonable punishments, she also failed to seek medical attention. In fact, she never even acknowledged that care was needed. At the hearing, Mother testified that she is not afraid of M.H, and did not believe that he would harm her, her children or anyone around her. As noted, since his removal, A.P.'s behavior has improved markedly at school and he gets into trouble less. He has also begun counseling to improve his demeanor. In all, he has become a happier child. Likewise, his younger brother is receiving counseling to deal with his anger issue—an issue that was unaddressed by Mother. In sum, Mother's unwillingness to protect A.P. and acknowledge his injuries endangers each of her children. As such, we find that the trial court properly determined that A.P., J.P., and M.M. were CHINS pursuant to I.C. § 31-34-1-1.

### CONCLUSION

Based on the foregoing, we hold that the trial properly concluded that A.P., J.P., and M.M. were children in need of services.

Affirmed.

DARDEN, J., and VAIDIK, J., concur.